



CITY OF LODI
COUNCIL COMMUNICATION

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AGENDA TITLE: Consider adoption of Resolution placing the national motto "In God We Trust" and state motto "Eureka" on plaques in the Carnegie Forum Lobby.

MEETING DATE: April 5, 2006 City Council Meeting

PREPARED BY: Steve Schwabauer, City Attorney

RECOMMENDED ACTION: That the Council consider adoption of Resolution placing the national motto "In God We Trust" and state motto "Eureka" on plaques in the Carnegie Forum Lobby.

BACKGROUND INFORMATION: At the March 29, 2006 Special Council Meeting, Council directed the City Attorney's Office to return with a legal analysis regarding the legality of displaying the national motto in celebration of its 50th year, the state motto in celebration of its adoption and the new city motto, "Livable, Loveable, Lodi" as a part of the City's centennial celebration.

The national motto has appeared on US currency since the Civil War. It was adopted in the 1950s pursuant to 36 USC § 186. Indeed variants of it appear in both the National Anthem, and in President Lincoln's Gettysburg Address. Referring to the national motto, Justice Brennan in a non-binding concurrence observed: "It is not that the use of these four words ["In God We Trust"] can be dismissed as 'de minimus'—for I suspect there would be intense opposition to the abandonment of the motto. The truth is that we have simply interwoven the motto so deeply into the fabric of our civil polity that its present use may well not present the type of involvement which the first amendment prohibits." (*Abington School District v. Schempp* 374 US 203, 303, Brennan J. conc.)


However, the national motto has never itself been the subject of a direct constitutional attack. Indeed, although frequently referred to in judicial opinions on the Establishment Clause of the First Amendment, it is typically in a concurring opinion or a dissent regarding another historical yet religious practice such as prayer in schools or at legislative sessions. However, given the most recent Supreme Court decision approving the State of Texas' display of the Ten Commandments on its capital grounds based upon its historic use and apparent secular purpose of reflecting the development of the American legal system, (*Van Orden v. Perry* 125 S.Ct. 2854) it would likely survive a federal constitutional challenge. The *Van Orden* Court noted that the strict *Lemon* test is typically applied to religion in the public square but also noted an exception to *Lemon*, where, as here, the use is of particular historic and nonreligious significance. It is important to note however, that the Establishment Clause area is highly dynamic and that even our nation's best legal minds have difficulty agreeing on the test that should be applied to the use of religious phrases and symbols in America's public square. Indeed, Justices Thomas, Scalia, Breyer and Rhenquist all noted in their separate opinions in *Van Orden* that the Court's Establishment Clause jurisprudence was incoherent and incapable of consistent application.

Surviving challenge under the federal constitution of course is not the sole test, for in California, we have our own Establishment Clause which has been interpreted to be even more protective of the principle of separation of church and state. Section 4 of article I guarantees the "[f]ree exercise and enjoyment of religion without discrimination or preference..." Under the California Constitution, prayers in school have

APPROVED:

Blair King, City Manager

been stricken down (*Sands v. Morongo Unified School District* 53 Cal.3d 863) yet nonsectarian prayers in legislative sessions have been upheld. (See e.g. *Rubin v. City of Burbank*, 101 Cal. App.4th 1194; 76 Ops. Cal. Atty Gen. 281) It should be noted that the prayer approved in *Rubin* must be nonsectarian, meaning that pastors must be chosen from the full spectrum of religious belief, rotated and admonished not to refer to a particular deity such as Jesus Christ or Allah. However, the *Rubin* Court did follow the U.S Supreme Court's exception to the Lemon Test for practices that are **so** imbedded in our historical framework that they are more a patriotic celebration of the principles of our founders than religious. **As** such, it is my view that this display, being small and in celebration of the Lodi's centennial year and being displayed together with the state and city motto would survive federal and state constitutional challenge.


Stephen Schwabauer
City Attorney

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RESOLUTION NO. 2006-__

A RESOLUTION ~~OF~~ THE LODI CITY COUNCIL TO
DISPLAY THE NATIONAL MOTTO, "IN GOD WE
TRUST," IN THE CARNEGIE FORUM

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WHEREAS, the National motto, "In God We Trust," has appeared on U.S. coins since 1864; and

WHEREAS, the National motto was adopted by the U.S. Congress on July 30, 1956 (36 U.S.C § 186); and

WHEREAS, a variant of the National motto appears in the National anthem, The Star Spangled Banner, which was recognized for official use by the United States Navy (1889) and by the White House (1916), and was thereafter made the National anthem by Congressional resolution on March 3, 1931; and

WHEREAS, this is the Centennial year of the incorporation of the City of Lodi, and the City of Lodi has adopted its own City motto ("Livable, Lovable Lodi") in celebration of its Centennial year; and

WHEREAS, the Lodi City Council desires to celebrate its Centennial year with a patriotic recognition of the National motto.

NOW, THEREFORE, BE IT RESOLVED by the Lodi City Council that the National motto shall be displayed on a plaque in the lobby of Carnegie Forum in the form attached hereto as Exhibit A.

Dated: April 5, 2006

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I hereby certify that Resolution No. 2006-__ was passed and adapted by the City Council of the City of Lodi in a regular meeting held April 5, 2006, by the following vote:

AYES: COUNCIL MEMBERS -

NOES: COUNCIL MEMBERS -

ABSENT: COUNCIL MEMBERS -

ABSTAIN: COUNCIL MEMBERS - None

SUSAN J. BLACKSTON
City Clerk

2006-_____

K-1

Susan Blackston

From: Susan Blackston
Sent: Tuesday, April 04, 2006 8:18 AM
To: 'Matt McReynolds'
Cc: City Council; Blair King; Steve Schwabauer
Subject: **RE:** Legal Opinion Letter re: "In God We Trust" Plaque
Plaque

Dear Mr. McReynolds:

This reply is to confirm that your e-mail message and attached letter was received by the City Clerk's Office and each member of the City Council. In addition, by copy of this e-mail, we have forwarded your message to the City Manager and City Attorney.

/s/ Susan J. Blackston, City Clerk

-----Original Message-----

From: Matt McReynolds [mailto:mattmcreynolds@pacificjustice.org]
Sent: Monday, April 03, 2006 5:48 PM
To: Susan Blackston; Susan Hitchcock; Bob Johnson; JoAnne Mounce; John Beckman; Larry Hansen
Subject: Legal Opinion Letter re: "In God We Trust" Plaque

Dear Clerk, Mayor and Members of the City Council,

Please find attached a letter from our organization addressed to the City Attorney regarding the "In God We Trust" plaque discussed at last week's City Council meeting.

Sincerely,

MATTHEW B. MCREYNOLDS, ASSOCIATE COUNSEL

Pacific Justice Institute P.O. Box 276600 Sacramento, CA 95827 Phone: (916) 857-6900 Fax: (916) 857-6902
www.PJI.org



**PACIFIC JUSTICE
INSTITUTE**

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VIA FAX, E-MAIL AND FIRST-CLASS MAIL

April 3, 2006

D. Stephen Schwabauer, City Attorney
City of Lodi
221 W. Pine Street
Lodi, CA 95242

Re: Proposed "In God We Trust" Plaque

Dear Mr. Schwabauer,

It has come to our attention that the Lodi City Council has directed you to research the legality of displaying a plaque with the national motto, "In God We Trust." We are writing to offer our perspective on this important issue, and also to offer our representation at no charge should the city approve the plaque and thereafter encounter any legal opposition.

By way of introduction, the Pacific Justice Institute is a nonprofit organization which specializes in defending religious liberty, including our nation's religious heritage. We have recently intervened as co-defendants alongside the U.S. Department of Justice in *Newdow v. Congress*, which is challenging the inclusion of "In God We Trust" on our nation's coinage. A few days ago we filed a motion to dismiss that lawsuit, so we are well acquainted with the case law on this issue.

As you are no doubt aware, the United States Supreme court has never indicated that governmental expression must be sanitized of all religious symbolism or references. To the contrary, the Court has acknowledged that phrases such as "In God We Trust" serve the legitimate secular purposes of "solemnizing public occasions, expressing confidence in the future, and encouraging the recognition of what is worthy of appreciation in society." *Lynch v. Donnelly*, 465 U.S. 668, 693 (1984). The Court has also declared that the history and ubiquity of such phrases ensure that they are "not understood as conveying government approval of particular religious beliefs." *Id.* Even those justices who dissented from the majority holding in *Lynch* felt that "such practices as the designation of 'In God We Trust' as our national motto, or the references to God contained in the Pledge of Allegiance...can best be understood...as a form a 'ceremonial deism.'" *Id.* at 716 (Brennan, J., dissenting). Consequently, the dissenting justices reasoned that these designations and references are immune from Establishment Clause scrutiny as they have lost any significant religious implication through rote repetition. *Id.*

Matthew B. McReynolds
Page 1, Letter to Mr. Schwabauer
April 3, 2006

"Raising the Torch of Justice for Our Civil Liberties"

It is important to note that, despite the Court's disagreement over the constitutionality of **other forms** of religious imagery and language used by the government, no **Supreme Court** Justice in *Lynch* disputed the constitutionality of the phrase "In God **We** Trust." This sentiment was echoed in *County of Allegheny v. ACLU*, 492 U.S. 573 (1989), where the majority **struck** down a nativity scene on City property but made it **crystal-clear** that they would not similarly treat the national motto:

Our previous opinions have considered in dicta the motto and the pledge, characterizing them **as consistent** with the proposition **that** government **may** not communicate an endorsement of religious belief.... We need not return to the subject of "ceremonial deism" ... because there is an obvious distinction **between** **crèche** displays and references to God in **the motto** and **the** pledge.

Id. at 602-603 (citations omitted). In **several other** cases, **both** majority opinions and individual Justices have further signaled their support for "In God We **Trust.**" See, e.g. *Wooley v. Maynard*, 430 U.S. 705, 717, n.15 (1977) (see also Rehnquist, J. dissenting at 722); *Stone v. Graham*, 449 U.S. 39, 45 (1980) (Rehnquist, J., concurring); *School Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 303 (1963) (Brennan, J. concurring); *Marsh v. Chambers*, 463 U.S. 783, 818 (1983) (Brennan, J. dissenting); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 322-323 (2000) (Rehnquist, C.J. dissenting); *Van Orden v. Perry*, 125 S.Ct. 2854, 2879 (2005) (Stevens, J. dissenting); *McCreary County v. ACLU*, 125 S.Ct. 2722, 2750 (2005) (Scalia, J. dissenting).

In conclusion, the Pacific **Justice** Institute would like to commend **the** City of **Lodi** for considering a plaque to commemorate the national motto, and to assure you that under applicable case law, such a plaque is constitutional. Should the city receive **any** legal threats from those **who** oppose **even** innocuous acknowledgements of religion in public life, the Pacific Justice Institute would **be honored** to defend the City of **Lodi** at no charge in state or federal court.

Please do not **hesitate** to contact me if **the** Pacific Justice Institute can be of **further** assistance to you.

Sincerely,



Matthew B. McReynolds
Associate Counsel
Pacific Justice Institute

CC: Mayor **Susan** Hitchcock
Members of **the** City Council
Lodi News-Sentinel

RESOLUTION NO. 2006-55

A RESOLUTION OF THE LODI CITY COUNCIL TO
DISPLAY THE NATIONAL MOTTO, "IN GOD WE
TRUST," IN THE CARNEGIE FORUM

WHEREAS, the National motto, "In God We Trust," has appeared on U.S. coins since 1864; and

WHEREAS, the National motto was adopted by the U.S. Congress on July 30, 1956 (36 U.S.C § 186); and

WHEREAS, a variant of the National motto appears in the National anthem, The Star Spangled Banner, which was recognized for official use by the United States Navy (1889) and by the White House (1916), and was thereafter made the National anthem by Congressional resolution on March 3, 1931; and

WHEREAS, this is the Centennial year of the incorporation of the City of Lodi, and the City of Lodi has adopted its own City motto ("Livable, Lovable Lodi") in celebration of its Centennial year; and

WHEREAS, the Lodi City Council desires to celebrate its Centennial year with a patriotic recognition of the National motto.

NOW, THEREFORE, BE IT RESOLVED by the Lodi City Council that the National motto shall be displayed on a plaque in the lobby of Carnegie Forum in the form attached hereto as Exhibit A.

Dated: April 5, 2006

I hereby certify that Resolution No. 2006-55 was passed and adopted by the City Council of the City of Lodi in a regular meeting held April 5, 2006, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Johnson, Mounce, and
Mayor Hitchcock

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – Beckman

ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON
City Clerk



On July 30, 1956, President Dwight D. Eisenhower signed a law declaring "In God We Trust" the official motto of the United States. Fifty years later, the City of Lodi officially recognizes the historical significance of our national motto in our country's affairs.

EXHIBIT A

CITY COUNCIL

SUSAN HITCHCOCK,
Mayor

BOB JOHNSON,
Mayor Pro Tempore

JOHNBECKMAN

LARRY D. HANSEN

JOANNE MOUNCE

CITY OF LODI



BLAIR KING,
City Manager

SUSAN J. BLACKSTON,
City Clerk

D. STEPHEN SCHWABAUER,
City Attorney

CITY HALL, 221 WEST PINE STREET / P.O. BOX 3006
LODI, CALIFORNIA 95241-1910
(209) 333-6702 / FAX (209) 333-6807 / www.cityclerk.gov

April 6, 2006

Jacquie Sullivan
Bakersfield City Council Member
"In God We Trust - America"
P.O. Box 11715
Bakersfield, CA 93389

**RE: Resolution to Display the National Motto, "In God We Trust," in the
Carnegie Forum**

The Lodi City Council, at its regular meeting of April 5, 2006, adopted the enclosed resolution to display the National motto, "In God **We** Trust," in the lobby of the Carnegie Forum (Council Chamber).

Should you have any questions, please feel free to contact my office.

Sincerely,


Susan J. Blackston
City Clerk

SJBNMP

Enclosure